APPENDIX "A"
(Filed April 10, 1978, Superior Court of the State of Washington for King County)

SUPERIOR COURT OF THE STATE OF WASHINGTON

ALONZO MARQUEZ,	)	
	)	
Plaintiff,	)	NO. 825250
	)	
vs.	)	Memorandum
	)	Opinion
UNIVERSITY OF WASHINGTON; JOHN HOGNESS, President of the University of Washington; RICHARD RODDIS, Dean of the School of Law; and BOARD OF REGENTS OF THE UNIVERSITY OF WASHINGTON,	)	
Defendants.	)	

Defendants move for summary judgment to dismiss plaintiff's claim which is predicated on three principal issues, to wit:

1. Defendants discriminated against plaintiff and in so doing violated RCW 49.60.

2. Defendants violated plaintiff's right to equal protection under the federal and state constitutions.

3. Defendants breached the contractual agreements with the plaintiff resulting in damages to plaintiff.

The factual background leading to this action may be summarized as follows:

Plaintiff, a member of a minority group, was admitted to the law school as a special admittee under its Affirmative Action Program, and enrolled in the fall quarter 1972. At the end of plaintiff's first year, his cumulative grade average was 63.94, equivalent to a D average and substantially below the 68 average which students must earn in order to continue law school. During said first year, plaintiff had received failing grades (below 60) in contracts, civil procedure and property 1, in addition to which plaintiff withdrew from two other courses.

Prior to the 1972 school year, the law school had rated *all* applicants using a combination of their scores on the LSAT (law school aptitude test) and their undergraduate grades. Such rating is known as the "predicted first year average". Plaintiff's PFYA was 66.68.

There were approximately 21 minority students in said law school class. Plaintiff was one of 12 students in his class who earned a cumulative grade average of less than 68 for the first year. All 12 were special admittees. Based on established procedure and guidelines, the law school's faculty committee on admissions reviewed the record of all 12 students. Each of them was evaluated individually based on certain established standards and guidelines which included the student's prospect for improving performance, the overall pattern and level of grades, number of classes dropped, grades below 60 and many other personal factors. As a result of such evaluation, 8 of the 12 students, based on the committee's recommendation were allowed to remain in school conditioned on their improving their cumulative grade average to 68 by the end of the second year. The remaining four students, including plaintiff, were terminated. However, the law school Dean thereafter sent a request to all members of the faculty proposing that these four terminated students be readmitted and thereby extend the law school's effort to administer a viable minority legal education program. Based on such recommendation, a special faculty meeting was held and the Dean's proposal accepted.

These four students, including plaintiff, were subject to *different* conditions on their remaining in school as compared to the other eight students who had likewise failed to receive passing grades. The four were required to repeat all classes in which they had not received a 68 average or better grade. However, they were extended the additional concession to drop the lower grade for any course which was repeated rather than counting it in the overall average. In comparison, the other eight students were not allowed to expunge any of the lower grades they had earned during their first year.

As a result thereof, the plaintiff's grade average, at the end of the second year, including three replacement grades for the ones dropped when he entered first year classes, was 67.725. Plaintiff was one of four students with grades under 68, and all of said students were members of a minority group and special admittees.

The law school faculty had previously recommended to have the Dean decide on further termination of students with failing grades and guidelines for this procedure were set up. Consequently, plaintiff and two other students with failing grades were terminated by the Assistant Dean after conferring with the Dean and soliciting comments from each student and faculty members. The fourth student with a grade point average of 67.13 was allowed to remain since he was one of the eight students at the end of the first year who was *not* allowed to drop any low grades in calculating cumulative grade averages and he was therefore in a different position than plaintiff.

The record is quite clear and convincing that in making the deci-

sion to terminate plaintiff, the school considered the overall pattern of plaintiff's grades, his motivation and other particular circumstances which plaintiff and faculty members had presented. It was the Dean's conclusion that plaintiff did not have a reasonable prospect of meeting the normal graduating requirements of the law school. Among the facts considered by the Dean was the scoring achieved by plaintiff in retaking three first year classes in which he had originally scored less than 60 and had scored no higher than 65 on his second attempt.

Plaintiff and his attorney were advised of their right to petition for faculty review of the Dean's decision but did not take advantage of that opportunity. In May of 1975, plaintiff filed a petition for readmission at which time he had enrolled in some law classes for the summer quarter of 1975, as a non-law student. He failed three of the four summer courses and again was denied readmission. The faculty in the fall of 1975 voted 25 to 0, with three abstentions, to deny plaintiff's petition for readmission. Plaintiff was present at the meeting and made a presentation on his own behalf.

Plaintiff claims that the law school discriminated against him; knowing that he was a special admittee with a below passing PFYA, it was duty-bound to provide him with special academic aid and assistance to overcome his deficiencies. In addition, plaintiff's other claims may be summarized as follows:

1. Plaintiff's termination was a violation of the equal protection clause in that other students who likewise failed were allowed to remain;

2. Failure of the school to round-up his grade to a passing one as previously practiced by the school; and

3. Refusing to allow plaintiff medical leave when it should have been obvious to the law school that such should have been granted and that others, similarly situated, were afforded leaves of absence.

4. The law school and plaintiff had entered into a contract, based on his admission and the information then made available to plaintiff which agreement provided that academic assistance would be furnished to him which the school failed to do; and to allow plaintiff's grade for the summer quarter of 1974 to count toward his cumulative average at the end of the second year.

It would also appear that during the school years of 1972-1973 and 1973-1974, the law school had no *formal* tutoring program for special students under its Affirmative Action Program. Such a program had existed in the past and due to some objections by special admittees to be singled out for such a program, it apparently was dropped. However, in the spring quarter of 1974 an informal arrange-

ment for tutorial assistance to special admittees was made available and plaintiff was so advised. In addition, of course, the usual contact between students and members of the faculty was available and faculty members were encouraged to assist students whenever a student felt that he needed special, individualized assistance. There were also review and student sessions for groups of students who indicated a need for such help.

There has been no showing made that the law school had any established policy allowing leaves of absence for medical reasons during the first year. Plaintiff has not shown any violation or non-adherence to said "policy".

It goes without saying, based on the case of *De Funis v. Odegaard*, 82 Wn 2d 11 (1973), that the elimination of serious racial imbalances caused by the under-representation of certain minorities within public legal education constitutes a *compelling state interest*. Therefore, the providing of increased educational *opportunities* to selected racial minorities by favoring such minorities in the law school's admission policy is necessary whenever racial imbalance in both school and in the professions it serves exists and should be eliminated. These are worthwhile goals which should continue to be nurtured. A corollary to the foregoing is the right of the administrative body, absent arbitrary or capricious action, to duly evaluate the total record of students who fail to meet the standards and requirements of the law school; a determination by such administrative body when exercised honestly and upon due consideration of the facts, even if there is room for two opinions, must be upheld.

However, the state also has *a compelling interest* to insist that those aspiring to become members of a certain learned profession which holds itself out to the public as having reached a high degree of deficiency, must be able to meet certain *minimum* standards of proficiency, expertise and intellectual achievement. The gravamen of plaintiff's action revolves itself around the school's alleged failure *to do more* than merely admit him to the law school on a special program, not available to non-minority applicants, since such admission simultaneously imposed the additional duty on the law school, being aware of plaintiff's deficiencies, to provide *more and separate academic aid and assistance* so as to enable plaintiff to meet the minimum standards imposed on all. How far must a state supported institution go to provide such additional benefits to a member of a minority, once the school lowers its scholastic standards to admit such a member to pursue a career in a learned profession? Is this primarily a legislative matter or does special admission to a law school, under these facts, likewise impose a parallel duty on the state to provide a greater

degree of special education, not available to others, and does a failure of such action constitute discrimination under the law?

The court must find that under the now universally established principles of affirmative action, plaintiff was granted certain benefits not available to non-minority students and any discrimination existing was *in favor of plaintiff, not* against him! RCW 49.60 proscribes certain conduct of discrimination AGAINST an individual. Such is not the situation here since plaintiff was granted *additional opportunities,* not available to others, including the taking of repeat courses, the privilege to expunge poor grades for the purpose of raising his grade average, etc. Absent any legislative directive, the court is unable to find any discriminative activity by the law school against this plaintiff on the record before it. The road travelled by a law student toward achieving his degree is a long, difficult and arduous one which imposes on such student, whether specially admitted or not, a continuing duty to search out, sometimes on his own, the help of other students, upper classmen, instructors and other members of the faculty to assist him in overcoming any deficiencies. To paraphrase Justice Holmes' somewhat outdated comments many years ago that a person may have a "constitutional right" to a general education, but he does not have a constitutional right to be a lawyer or a doctor!

At what stage of a student's educational pursuit may a university, acting upon established guidelines, conclude that a student does *not* possess the necessary proficiency, intellectual stimulus or motivation to be a lawyer and therefore terminate him? Is the burden of proof on the University to make a showing that *every conceivable aid* has been provided to such student prior to termination or is it sufficient to show that a reasonable effort has been made to rehabilitate such student by means of different opportunities to "make good" and which opportunities were not available to non-minority students?

The court concludes that the affirmative action program is of a compelling state interest to *assure the admission to the* bar of *qualified members of minorities* and such policy includes the lowering of admission standards and the granting of special benefits, not available to others, to accomplish such purpose. However, the University is only obligated, absent some other legislative determination, to provide *reasonable assistance,* once a student has been especially admitted, and the Univeristy does not have a duty to explore *every conceivable means of extra academic aid* to assure the development of a competent lawyer. Here plaintiff was afforded reasonable and adequate opportunity to meet the minimum standards of scholastic achievement, extended over a period of two years. Unfortunately, he failed to meet that test.

The court further finds that the defendants did not violate plain-

tiff's right to equal protection under either the federal or state constitution. Law school admissions pose an extremely complex problem and require a very delicate balancing of diverse factors. The dean's office and faculty committee sought to identify, by adhering to established guidelines, within the minority category those persons who had the *highest probability of succeeding* in law school. Such classifications and determinations were made on a very reasonable basis, although not made with mathematical nicety or absolute certainty. Here the criteria for admissions and the treatment of plaintiff and other minority students subsequent to admission were not arbitrary and capricious in any way; therefore, the court will not vitiate the judgment of the dean and faculty committees, who are best qualified by training, expertise, and personal knowledge of the student, unless a constitutional violation is shown. Law school admissions need not become a game of numbers; the process should remain sensitive and flexible with room for informed judgment and interpreting mechanical indicators. The school authorities, of necessity, must have some reasonable amount of faculty discretion in admitting, readmitting or terminating a student and the school faculties' decision must enjoy some freedom from interference from other non-educational tribunals. It is only when the school authorities abuse this discretion that a court may interfere with their decision to dismiss a student. The court is unable in this case, to find any abuse of discretion or any arbitrary or capricious action on the part of the defendants in their evaluation and final dismissal of plaintiff.

Finally, plaintiff's allegation of breach of contract must be considered. Plaintiff premises his allegation on three contracts between him and the University of Washington Law School, namely (a) an agreement to provide him with academic assistance; (b) an agreement to allow his grades for summer quarter 1974 to count towards his cumulative average at the end of the second year; and (c) an agreement to continue to round up all accumulated grade point averages.

It would appear that for some years past a practice had prevailed to allow grades to be rounded up, although the law school faculty voted in June of 1968 not to round cumulative student grades to the nearest whole number; through some misunderstanding that practice had never been instituted in the registrar's office. The matter was raised again in a faculty meeting in March of 1973, at which time the faculty took similar action. Thereafter, the registrar adhered to the faculty's determination. The record is clear that whether grade point averages are rounded up or not, *all students* in plaintiff's class were treated on the same basis. There was no separate agreement between defendant and plaintiff on that issue. Likewise, the court is unable to find any agreement between plaintiff and the law school regarding

his summer 1974 grades to count toward his cumulative average at the end of the second year. In any event, the record is clear that even allowing such cumulative averaging, it would not have helped plaintiff to achieve a passing grade.

Lastly, plaintiff places considerable reliance on the following excerpt from the prelaw handbook of the Association of the American Law Schools reading as follows:

> "Special programs—including recruitment, admission, and financial and *academic* aid—are available for students of minority, ethnic groups." (Emphasis ours).

It is plaintiff's claim that the above clause would constitute a contract on which he had a right to rely. The court does not believe that the above excerpt, standing by itself, would constitute an enforceable contract since its language is too broad to be specifically enforaceable, and there is no clear-cut showing that there was a meeting of the minds between the parties, together with a mutual intent. At best, the above quote constitutes an invitation or announcement to those students who are interested in the aid offered, the size, nature and details of any such aid being subject to agreement between the parties. There was *no* express agreement here.

In conclusion, the court finds that there is no genuine issue as to any material fact relating to plaintiff's claim that defendants violated the state's anti-discrimination law; nor is there any genuine issue on plaintiff's claim as to an alleged violation by defendants of plaintiff's right to equal protection under either the federal or state constitution or as to any breach of contract. The defendants have not committed, under the peculiar and distinct facts of this case, any actionable wrong under any of the theories set forth in plaintiff's complaint. Therefore, defendants' motion for summary judgment is granted.

DATED this 10th day of April, 1978.

_____

Judge

APPENDIX "B"

(Filed April 30, 1979, Clerk, State of Washington Court of Appeals)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

ALONZO MARQUEZ,	)	
	)	
Appellant,	)	
	)	
v.	)	NO. 6581-I
	)	
UNIVERSITY OF WASHINGTON; JOHN HOGNESS, President of the University of Washington; RICHARD RODDIS, Dean of the School of Law; and BOARD OF REGENTS OF THE UNIVERSITY OF WASHINGTON,	)	DIVISION ONE
	)	
Respondents.	)	

JAMES, J. — In 1972, Alonzo Marquez, a Mexican-American, was admitted to the University of Washington Law School under its affirmative action program for minority applicants. After 1 year of school, Marquez and certain other special admittees in his entering class were initially terminated for poor scholarship. Subsequently, the faculty voted to allow them to continue, conditioned upon certain improvement of their grade point averages by the end of their second year. After 2 years of school, Marquez was terminated permanently.

Marquez brought this suit against the Law School and its officials (collectively Law School) seeking reinstatement and monetary damages. He alleges the denial of equal protection, the violation of the Washington Law Against Discrimination, RCW 49.60, and breach of contract. The trial judge granted summary judgment in favor of the Law School and dismissed the suit.

One of Marquez' contentions on appeal is that the case was not ripe for summary judgment. We agree. At the time of the summary judgment hearing, Marquez had a motion outstanding to compel the Law School to answer certain of his interrogatories. Although Marquez had not noted his motion for hearing, his trial brief in opposition to the Law School's summary judgment motion noted its pendency. Under these circumstances, we hold the trial judge erred in granting summary judgment.

A motion for summary judgment should be granted only if, after considering the pleadings, affidavits, depositions, and all

> reasonable inferences drawn therefrom in favor of the non-moving party, a trial court determines that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law . . . . A summary judgment should not be used as a means to "cut litigants off from their right to a trial."

(Citations omitted.) *Garbell v. Tall's Travel Shop, Inc.*, 17 Wn. App. 352, 353, 563 P. 2d 211 (1977). Until the Law School provides discovery, whether a genuine issue of material fact exists cannot be ascertained.

We do not reach the other issues presented by Marquez' appeal.

Reversed and remanded for proceedings consistent with this opinion.

_____ _____

Chief Judge

WE CONCUR:

_____ _____

APPENDIX "C"
(Filed December 31, 1979, Superior Court of the State of Washington for King County)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

ALONZO MARQUEZ,	)	
	)	
Plaintiff,	)	
	)	
—vs—	)	
	)	
UNIVERSITY OF WASHINGTON; JOHN HOGNESS, president of the University of Washington; RICHARD RODDIS, Dean of the School of Law; and BOARD OF REGENTS OF THE UNIVERSITY OF WASHINGTON,	)	No. 825250
	)	
Defendants.	)	

VERBATIM REPORT OF PROCEEDINGS
COURT'S ORAL DECISION

BE IT REMEMBERED, That on the 31st day of December, 1979, at the hour of 8:35 o'clock a.m., the above-entitled and numbered cause came on regularly for hearing before the Honorable GERARD M. SHELLAN, one of the Judges of the above-entitled Court, sitting in Department No. 32 thereof, at the King County Courthouse, in the City of Seattle, County of King, State of Washington.

The plaintiff appeared by and through his counsel, ANTONIO R. SALAZAR, (of ManDonald, Hoague & Bayless);

The defendants appeared by and through their counsel, STEPHEN M. TODD, (of Reed, McClure, Moderi & Thonn, P.S.).

WHEREUPON, the following proceedings were had, to wit:

• •

THE COURT: Good morning.

Please be seated.

This is in the case of Alonzo Marquez, plaintiff, vs. University of Washington, and others, Cause No. 825250.

First of all, I want to thank counsel for their excellent presentation, all the numerous briefs and affidavits you have submitted to me.

This is defendants' second motion for summary judgment in all issues.

Plaintiff commenced this action on March 7, 1977; thereafter amended his complaint and alleging among others, discriminatory practices by defendants in violation of state law, namely, RCW 49.60; violation of plaintiff's rights under the state and federal constitutions' equal protections laws, and various agreements and contractual arrangements between defendants, resulting in damages to plaintiff in the amount of $250,000 for loss of income and other damages; seeking reinstatement to the University of Washington Law School, and praying for additional relief.

Defendants had moved for summary judgment the first time in March of 1978. By memorandum opinion of this Court on April 10, 1978, summary judgment was granted.

Thereafter, plaintiff appealed.

On April 30, 1979, the Court of Appeals, Division No. 1, reversed and remanded on the ground that at the time of the summary judgment hearing, plaintiff had an unnoted motion outstanding to compel defendants to answer certain interrogatories.

The merits of the case were not reached by the Appeals Court.

Neither plaintiff's nor defendants' then counsel, in oral argument before this Court on defendants' first motion for summary judgment brought up at any time the matter of the unanswered interrogatories.

Reference is made to the Court's memorandum opinion of April 10, 1978, as to the findings then made. They need not be repeated here, except as supplemented herein below.

After defendant had filed his new motion for summary judgment, plaintiff gave notice of his desire to take depositions of certain individuals; including the then Dean of the Law School and other law professors.

On December 21, 1979, extensive argument was presented to this Court on several issues with emphasis by plaintiff on the defendants' failure to grant him sick leave and/or the right for him to withdraw from law school, the defendants' contractual breaches, including the interpretation of the term "academic aid."

This Court has carefully reviewed all the memoranda, briefs, affidavits, interrogatories, as well as the three volumes of court records.

I've also reviewed the second supplemental brief and affidavit

received from plaintiff on December 28, 1979.

The Court concludes that the answers to the eleven interrogatories primarily dealing with sick leave and leaves of absence which were then outstanding upon argument on the defendants' first motion for summary judgment last year, do not create any genuine issue of material fact which would warrant a trial on such issues.

The total record on said issues reveals conclusively that first-year students were not entitled to leaves of absence. The Law School catalog clearly set out its policy on withdrawals.

The plaintiff, however, has cited two instances occurring after his termination from the law school where:

> (a) One student in good standing, whose mother had become seriously ill, and who depended on her son for substantial support, was allowed to withdraw under these extraordinary circumstances; and
>
> Second, a female student in good standing was granted maternity leave in her second year, and then was later readmitted.

No other instances of withdrawal or leaves of absence not in compliance with the then existing policies and guidelines of the school were known.

The Court concludes that plaintiff cannot rely on the above two situations to complain about any discriminatory practice against him in violation, or violations of his constitutionally-protected rights. Nor is there any credible evidence whatever that the defendant, its staff, administration, or faculty, had acted arbitrarily or capriciously on these issues.

The above two instances relate to different time and different fact patterns. Plaintiff would not be entitled, as a matter of right, to demand the same relief in contravention of established guidelines and rules applicable to all others.

Plaintiff next raised the issue of contractual breaches arising out of certain wording in the 1972-73 prelaw handbook of the Association of American Law Schools and the Law Admissions Council, as relating to the University of Washington Law School:

> "Special Programs—Including Recruitment, Admissions and Financial and Academic Aid—are available for students of minority ethnic groups,"

and end of excerpt from the prelaw handbook.

Plaintiff has raised a very interesting issue. It is plaintiff's position that the term "academic aid" ripened into an enforceable con-

tractual relationship when the plaintiff elected to enter law school as a qualified member of a minority group, and that the law school was then legally obligated, under these particular circumstances, to provide him with special "tutorial aids." "Tutorial aids."

It is the plaintiff's position that the term "academic aid" is practically synonymous with the term "tutorial aid."

In addressing this issue, this Court will consider both references to "financial and academic aid." Are such terms definite and certain enough, subject to specific performance? And do they entail the necessary elements of a contractual relationship, to wit, an offer and acceptance, mutually of assent, namely, meeting of the minds as to the essential terms of the contract? I.e., does the term "financial aid," without more, in the handbook, contain a promise by the alleged offeror, in this case the University of Washington Law School, to pay all of a student's financial needs throughout law school? Or does such notice or invitation advise the student that some financial assistance may be available subject to terms and conditions to be worked out between the school and the applicant, depending on his or her need, and the ability of the public institution to garner enough funds to provide such help to those in need?

Absent arbitrary or capricious conduct, or violation of any law, or mandate of the law school, the issue of "financial aid" by the student versus the availability of public funds for such purposes, has to be carefully weighed and apportioned by the school authorities predicated on established guidelines.

Thusly, the term "financial aid" by itself does not rise to the dignity of an enforceable contract merely by a student's election to enroll at the University of Washington Law School, whether under any affirmative action program or not.

Let us now proceed to the matter of "academic aid" as propounded by plaintiff.

In his brief of December 19, 1979—an excellent brief, incidentally—plaintiff frames the issue quite succinctly; namely, (In my opinion this is the crux of the matter.)

"Would a reasonable person in Alonzo Marquez's position, given all the attendant circumstances, believe that the law school would provide him with academic assistance if he enrolled at the law school as a specially-admitted minority student? And did such belief translate into a contract by his act of enrolling at the University of Washington Law School?"

Unfortunately, for plaintiff, the elements required for the formation of any contract, as set forth above, cannot be vitiated

because of some personal belief, hope, or expectancy on the part of one party only. There must be a meeting of the minds without which the parties would act in a vacuum.

The Court concludes, as a matter of law, that the phrase "academic aid," same as the term "financial aid," by itself, as interpreted by plaintiff, is too broad and indefinite to result in an enforceable contract upon an applicant's enrollment in school.

Academic aid certainly may, and often does, include special tutoring on a one-to-one or group basis. That is not to say that such aid may not take a variety of various forms and means, such as those extended to plaintiff and established by the University at the time.

If such phrases, as above quoted, without more, do constitute a distinct offer acceptable upon enrollment by the student, then let us ponder, for just a moment, the consequences of similar phrases frequently found in schools' handbooks:

> "Our graduates are leaders in the legal/medical profession."
>
> "Job assistance provided upon graduation."
>
> "Our teaching faculty is unique."
>
> "Our graduates are eagerly sought after by government and private industry alike."

And many of these like it.

What are the legal consequences to an institution of higher learning when a student enrolls after perusing such handbook?

Possibilities are unlimited. However, none of them can be considered an unqualified offer, subject to acceptance by mere enrollment and enforceable contractually thereafter.

However, let's assume that the term "academic aid" was an offer which ripened into a contractual arrangement in this case after the student enrolled and entered law school, and quoting and reading from the handbook.

At the time of plaintiff's acceptance in the fall of 1972, twenty-five other minority students were admitted, of which total twenty-two were special admittees. Admittees. All members of a minority.

Of these, seventeen graduated. About seventy-seven percent. Two of them progressed no further than the first year. And plaintiff was one of three special admittees who attended beyond the first year, but failed to graduate.

Plaintiff was one of twelve students, after the first year, who failed to reach the required sixty-eight percent average. Plaintiff's cumulative grade point average after the first year was 63.94.

He had failed courses in contracts, civil procedure, and property I; all three of which are basic required first-year courses. He had withdrawn from two other courses.

To determine whether defendants violated any of plaintiff's constitutional protective rights, or engaged in any discriminatory practices, or breached any enforceable contractual rights to plaintiff, let us look at the record as submitted to this Court:

> (a) Contrary to the vote of the law school's committee on admissions and readmissions to drop plaintiff for insufficient scholarship, plaintiff appealed to the faculty and was readmitted when the faculty reversed the decision of the committee and allowed plaintiff to continue subject to certain conditions:
>
> > (a) to repeat all classes in which a below sixty-eight grade had been received; and
> >
> > (b) special permission to drop the lower grade of the submitted course rather than the cumulative overall grade average.

It must be remembered, at the end of the first year, twelve students failed; all minority members.

Each case was considered and evaluated on its merits, including the overall pattern and level of grades, including those under sixty percent.

Personal factors which may have contributed to the students' low motivation and prospects for performance were considered. Eight of the students were allowed to remain, initially all of whom had higher grade averages than plaintiff on the express condition that they would be required to raise their overall average above sixty-eight in the second year. Those eight were not allowed to drop any course with the lower grade.

The other four students were dropped initially and readmitted upon the special admission of the Dean of the law school, as above stated.

There were many notable differences in these two groups of these eight students and four students, respectively, as more specifically set forth in the affidavit of the then Assistant Dean, Robert S. Hunt.

The Court is unable to detect or infer the slightest irregularity in the processing or classification of the failing students. In fact, every effort was made to accommodate those who were earnestly and diligently seeking a second chance.

At the end of the second year four members of this class, inclu-

ding plaintiff, had failing grades again. That means under sixty-eight.

At that time plaintiff's grade average, including three replacement grades for repeat courses, then stood at 67.725; 67.725.

Plaintiff and one other student were members of the group of four which had been at the bottom of the first-year class. Three students were then finally terminated by the Dean in September of 1974; after additional consultations with the Assistant Dean, Mr. Charles Z. Smith, and solicitation of, and comments from, each student and all faculty members in whose classes these students have been enrolled.

Although plaintiff also complained that his 1974 summer grades were not included in his overall average, any such inclusion for the summer of 1974 would not have improved plaintiff's standing.

After enrolling originally for thirteen hours of law studies during the summer of 1974, he withdrew from one three-hour class; one class was cancelled, apparently due to the illness of the instructor; another three-hour class plaintiff received an incomplete; another, his grade was forty-four.

Plaintiff and his then attorney were duly advised of the right of appeal after the September, 1974, termination, but later abandoned their election to do so.

In addition to concessions and rights granted to plaintiff, members of the faculty in the period in question, 1972/1974, provided some review and study sessions, as well as counseling, upon requests. Student groups were organized for such purposes on a fairly regular basis.

Plaintiff, in his answer to interrogatories, especially No. 20, admits, at least in part, the existence and availability of such assistance; including review and study sessions by his professors, as well as study group sessions by students themselves.

Plaintiff also received some private tutoring from his former attorney, a member of the Washington State Bar.

Dean Hunt's affidavit reveals that no formal tutoring program existed for special admittees during the school years of 1972 to '73 and 1973 to 1974.

According to Dean Hunt's affidavit, which is uncontradicted, such programs had existed prior to that time, but had been objected to by special admittees on the grounds that they did not wish to be singled out in a formal paternalistic tutoring session.

In the spring of 1974 informal tutoring assistance was made available to special admittees. According to Dean Hunt's affidavit

notice of this was given to plaintiff of such arrangement, but was not responded to by plaintiff. Plaintiff denies such notification from Dean Hunt.

Plaintiff's counsel and plaintiff's affidavit provide some additional information as to certain changes in grading policy which was adopted by the law School in May of 1974, allowing courses to be repeated and adjustment in grades.

However, in the Court's opinion, the controlling issue is a policy of the law school as it existed at the time of plaintiff's unsatisfactory scholastic performance. The evidence is overwhelming that plaintiff, and several others, were then granted academic concessions not then available or offered to others.

Based on the foregoing resume of special academic considerations granted plaintiff and others similarly situated, one must reach the inescapable conclusion the plaintiff was extended every reasonable opportunity to succeed in law school.

No case has been cited, and the Court is unaware of any rule of law that would impose a mandate on a public or private educational institution, i.e., University of Washington Law School, under the circumstances disclosed by this record to assure or guarantee the "making of a lawyer."

The function of such institutions, and the implementation of any affirmative action program, is to afford every reasonable opportunity to such qualified student to succeed. But the major contribution must, of necessity, be borne by the individual himself and not by the state.

Motivation; devotion to the law; perseverance; and addiction to serious studies, are the basic ingredients of anyone seeking such professional career.

Finally, absent arbitrary or capricious behavior, or violation of any law of public policy, the matter of admission, readmission, or termination of a student, should be left to those best qualified by learning and expertise, their familiarity with the problems, the students, and the curriculum; namely, the administration, the staff and faculty of such institutions, and not the judiciary.

The Court, therefore, concludes, as a matter of law, that there is no genuine issue of any material fact as to the matters submitted in connection with the defendants' second motion for summary judgment.

Such motion is granted on all issues raised.

The Court's order is stayed for a period of ninety days to allow

plaintiff to complete his pretrial discovery, if such additional time is required by plaintiff.

If any genuine issue of material fact should develop as a result of such further pretrial discovery during such extended 90-day period, it should be immediately brought to the Court's attention for any reconsideration of this order.

This completes the Court's memorandum opinion on this issue.

Are there any questions?

MR. SALAZAR: Your Honor, will that be ninety days from today?

THE COURT: Yes. Let me ask counsel.

Do you believe that ninety days will give you sufficient additional time?

I notice that you have noted the deposition of the Dean sometime the first week in January.

MR. TODD: That's correct.

THE COURT: You wanted to take some additional two depositions.

MR. TODD: Two or three additional ones, yes.

THE COURT: Do you believe ninety days reasonable under the circumstances and allow you to complete your discovery?

MR. TODD: I think it's sufficient time, Your Honor.

THE COURT: Ninety days from date.

That brings us up to the end of March. I don't have a calendar here, but I assume March 31, 1980, unless that's a Sunday.

MR. SALAZAR: Your Honor, then proper procedure would be for the plaintiff to submit to the Court and opposing counsel some type of brief or explanation of any reason you should reconsider.

THE COURT: Well, if defendants' counsel representing the University and its officials believe some issue has been raised during the additional pretrial discovery, I think that should be brought to the Court's attention by either counsel.

We're interested in determining whether there was any change by reason of additional discovery.

Any further questions?

(No response.)

THE COURT: Okay. Thank you, gentlemen.

MR. SALAZAR: Thank you very much, Your Honor.

APPENDIX "D"

(Filed May 17, 1982, Clerk, State of Washington Court of Appeals)

COURT OF APPEALS OF THE STATE OF WASHINGTON

ALONZO MARQUEZ,	)	
Appellant,	)	
v.	)	No. 9080-1-I
	)	
UNIVERSITY OF WASHINGTON: JOHN HOGNESS, President of the University of Washington; RICHARD RODDIS, Dean of the School of Law; and BOARD OF REGENTS OF THE UNIVERSITY OF WASHINGTON,	)	Division One
Respondents,	)	Filed May 17, 1982

ANDERSON, C. J.

FACTS OF CASE

A former law student, Alonzo Marquez, appeals the dismissal of his suit against the University of Washington and certain of its officials. We affirm.

Marquez, of Mexican-American descent, was admitted to the University of Washington Law School (hereinafter Law School) in the fall of 1972 as a special admittee under its affirmative action program. During the school years, 1972-73 and 1973-74, the Law School did not have a formal tutorial assistance program for specially admitted students. Informal unstructured academic assistance, however, was available to those students who requested it. The plaintiff did not take full advantage of the opportunities afforded him in that regard.

The Law School requires all law students to maintain a grade point average of 68 in order to continue. Marquez was one of 12 students who earned a grade point average less than the required 68 at the end of his first year. His average was 63.94.

All 12 of those students were individually evaluated according to established standards. The faculty committee terminated Marquez and three other specially admitted first year students. The Dean of the Law School, however, convinced the faculty to retain Marquez and the other three on certain conditions. These four students were required to repeat all classes in which they had not received a grade of 68 or better. They were allowed to drop the lower grade for any course which was repeated rather than being required to count it in their overall average.

At the end of Marquez' second year, his grade point average was 67.725, just below the required 68 average. Since the established policy of the law school at the time was not to round grade averages upward, Marquez was again terminated for low scholarship. At the time of this second termination, Marquez was also taking summer school courses at the Law School and the grades in those courses were not included in his cumulative average. The grades he obtained in his summer courses would have lowered, not improved, his grade point average.

In November 1977, Marquez, through his attorney, filed a complaint against the University of Washington and others alleging breach of contract, denial of his equal protection rights and violations of the state law against discrimination, RCW 49.60. By his suit, Marquez sought readmission, $250,000 damages, attorneys' fees and costs. In the spring of 1978, the Superior Court granted the University's motion for a summary judgment of dismissal. Marquez appealed. On April 30, 1979, this court reversed the trial court on procedual grounds, the basis being that at the time summary judgment was entered Marquez had outstanding a motion to compel answers to interrogatories. On remand, additional discovery was done and on July 8, 1980, the Superior Court entered a new order granting the University's motion for summary judgment. Marquez' pro se appeal from that order presents three basic issues.

ISSUES

ISSUE ONE. Did the trial court err in granting the University's motion for summary judgment on the breach of contract claims?

ISSUE TWO. Did the trial court err in granting the University's motion for summary judgment on the equal protection claim?

ISSUE THREE. Did the trial court err in granting the University's motion for summary judgment on the anti-discrimination claim?

DECISION

ISSUE ONE.

CONCLUSION. The trial court did not err in granting summary judgment on the contract claims because the uncontroverted facts establish that the University of Washington School of Law did not breach its education contract with Marquez.

When Marquez applied and was admitted to law school, the pre law handbook of the Association of American Law Schools provided, in part, the following description of the Law School:

Special programs - - including recuitment, admission, and finan-

cial and academic aid - - are available for students of minority ethnic groups.

Marquez contends that the above language became part of the contract between himself and the Law School upon his matriculation and that the Law School breached the "academic aid" term by not providing him with a formal structurized tutorial assistance program.

It is now generally accepted that the relationship between a student and a university is primarily contractual in nature. *Maas v. Corporation of Gonzaga Univ.*, 27 Wn. App. 397, 400, 618 P.2d 106 (1980). " 'Since a formal contract is rarely prepared, the general nature and terms of the agreement are usually implied, with specific terms to be found in the university bulletin and other publications; . . .' " *Peretti v. Montana*, 464 F. Supp. 784, 786 (D. Mont. 1979), rev'd on other grounds, 661 F.2d 756, 757 (9th Cir. 1981) quoting, Note, *Expulsion of College and Professional Students - - Rights and Remedies*, 38 Notre Dame L.J. 174, 183 (1962). For the purposes of this case, we will assume that the singular reference to academic aid contained in the prelaw handbook was definite enough to form a part of Marquez' contract with the Law School.

However, while

> "[i]t is apparent that *some* elements of the law of contracts are used and should be used in the analysis of the relationship between plaintiff and the university to provide some framework into which to put the problem . . . .. This does not mean that 'contract law' must be rigidly applied in all its aspects, nor is it so applied even when the contract analogy is extensively adopted . . . .. The student-university relationship is unique, and it should not be and can not be stuffed into one doctrinal category. . . ."

Lyons v. Salve Regina College, 565 F.2d 200, 202 (1st Cir. 1977), cert. denied, 435 U.S. 971, 56 L. Ed. 2d 62, 98 S. Ct. 1611 (1978), quoting with approval from *Slaughter v. Brigham Young Univ.*, 514 F.2d 622, 626, (10th Cir.), *cert. denied*, 423 U.S. 898, 46 L. Ed. 2d 131, 96 S. Ct. 202 (1975). Thus, in light of the wide latitude and discretion afforded by the courts to educational institutions in academic matters, *Maas v. Corporation of Gonzaga Univ., supra* at 402, the University is entitled to some leeway in modifying its programs from time to time so as to properly exercise its educational responsibility. *Mahavongsanon v. Hall*, 529 F.2d 448, 450 (5th Cir. 1976). The concept of a binding, absolute, unchangeable contract is particularly anomalous in the context of post graduate level work. *Mahavongsanan v. Hall, supra.*

In addition, the construction of a contract and the legal effect of its terms present questions of law for the trial court which may be

properly resolved by summary judgment. *Murray v. Western Pac. Ins. Co.*, 2 Wn. App. 985, 992-93, 472 P.2d 611 (1970). *Accord, Giles v. Howard Univ.*, 428 F. Supp. 603, 605-06 (D.D.C. 1977). Further, where, as here, the agreement is not an integrated one, the standard is that of reasonable expectations -- what meaning the party making the manifestation, the Law School, should reasonably expect the other party to give it. *Lyons v. Salve Regina College, supra* at 202, quoting *Giles v. Howard Univ., supra* at 605. *See* J. Calamari & J. Perillo, *Contracts* § 3-10, at 118-19 (2d ed. 1970).

Applying the foregoing to the case before us, it is evident that the prelaw handbook did no more than announce that certain "programs" including "academic aid" to certain prospective students "are available". It did not tie the Law School to a specific program or type of "academic aid". Nothing therein created a right in the applicant to obtain a law degree absent his meeting and maintaining reasonable standards established by the Law School. "The possibility of academic failure is implicit in the nature of the educational contract between a student and a university." *Maas v. Corporation of Gonzaga Univ., supra* at 401.

The uncontroverted affidavits and depositions in this case establish that while the Law School, at the time of Marquez' matriculation, did not have a structured or mandatory tutorial assistance program, it did provide other types of academic aid opportunities unusual to law schools at that time. 1/ These included the availability of faculty assistance outside the classroom to specially admitted students upon request, small class sections for first year students, a rigidly structured legal writing and research program employing full time faculty members and the possibility of taking lighter course loads. Marquez did not take full advantage of these opportunities and, in fact, declined offers of out of class assistance from his legal writing instructor.

Furthermore, Marquez was permitted to remain in school after his first year, even though he failed to meet the Law School's grade point requirements, and he was also allowed to expunge his first year's failing grades by repeating courses which he had failed.

1/ Prior to Marquez' first year, the Law School did have a formal tutoring program for specially admitted students only. Due to student concern about stigmatization and a general dissatisfaction with the student tutors, however, the program was eliminated and informal voluntary assistance opportunities were substituted. This change was a reasonable modification of the Law School's academic assistance program made in a good faith exercise of its educational responsibility. *See Mahavongsanan v. Hall*, 529 F.2d 448, 450, (5th Cir. 1976).

There being no issue of material fact with respect to the foregoing, the trial court did not err when it granted a summary judgment dismissing Marquez' case since, on the face of it, the University lived up to its contract with Marquez by providing him with academic assistance and the opportunity to obtain additional academic assistance had he desired to take advantage of the opportunities extended.

Marquez also argues that the University breached its contract with him by not rounding off his grade point average upward and by not including his summer school grades in his cumulative average prior to his final termination. Our review of the entire record in a light most favorable to Marquez demonstrates, however, an absence of any issue of material fact respecting the purported promises between Marquez and the Law School. The Law School did no more than follow its established procedures and there is no evidence of a separate agreement.

The summary judgment entered on the contract issues was proper. *See* CR 56 (c); *Morris v. McNicol,* 83 Wn.2d 491, 494-95, 519 P.2d 7 (1974).

ISSUE TWO.

CONCLUSION. Because the record does not establish or raise an inference of arbitrary or capricious action on the part of the University, the trial court did not err in granting summary judgment on the equal protection claim.

In his complaint, Marquez alleges that various actions of the law school regarding his termination and the school's medical leave of absence policy violated his right to equal protection as guaranteed by our state and federal constitutions.

Absent a suspect classification or infringement of a fundamental interest, however, a classification which is rationally related to a legitimate state interest is not violative of a person's right to equal protection. *Reed v. Reed,* 404 U.S. 71, 75-76, 30 L. Ed. 2d 225, 92 S Ct. 251 (1971); *DeFunis v. Odegaard,* 82 Wn.2d 11, 31, 507 P.2d 1169 (1973), *vacated as moot and remanded,* 416 U.S. 312, 40 L. Ed. 2d 164, 94 S. Ct. 1704, *no action on remand,* 84 Wn.2d 617, 529 P.2d 438 (1974). Because Marquez' equal protection claims are not related to discrimination on the basis of a suspect classification and the right to a university education is not a fundamental interest, *Rosenstock v. Board of Governors,* 423 F. Supp. 1321, 1326 (M.D. N.C. 1976), the "rational basis" test applies.

Further, absent arbitrary or capricious action on the part of the Law School, a court will not interfere with the academic decisions of a university. *Maas v. Corporation of Gonzaga Univ., supra* at 402-403. *See Connelly v. University of Vt.,* 244 F. Supp. 156, 159-60

(D. Vt. 1965).

In the case before us, all the decisions of the University regarding Marquez were made pursuant to reasonable and established school policies and any deviations therefrom were rationally related to legitimate interests in the Law School. There was no showing of an abuse of discretion or of any arbitrary or capricious action. Thus, the trial court did not err in granting defendant's motion for summary judgment as to the equal protection claim.

ISSUE THREE.

CONCLUSION. The trial court did not err by granting summary judgment on the discrimination claim because there is no evidence whatsoever that the University discriminated against Marquez or treated him unfairly.

Before a violation of this state's law against discrimination can be established, the aggrieved party must show "practices of discrimination *against* any of its inhabitants . . ." *(Emphasis added.) RCW 49.60.010; see Ellingson v. Spokane Mortgage Co.*, 19 Wn. App. 48, 54-55, 573 P.2d 389 (1978). Here, there is no evidence that Marquez was discriminated against by the University. The record establishes to the contrary and shows that Marquez was treated with great solicitude by the University of Washington and its Law School and was accorded every reasonable consideration in his quest for a legal education. Therefore, a summary judgment of dismissal on this claim, as on the others, was proper.

As the experienced Superior Court judge who ruled on the motions terminating this case in the trial court for the final time summarized it in his oral decision:

> Based on the foregoing resume of special academic considerations granted plaintiff and others similarly situated, one must reach the inescapable conclusion the plaintiff was extended every reasonable consideration, every reasonable assistance, and every reasonable opportunity to succeed in law school.
>
> No case has been cited, and the Court is unaware of any rule of law that would impose a mandate on a public or private educational institution, i. e., University of Washington Law School, under the circumstances disclosed by this record to assure or guarantee the "making of a lawyer."
>
> The function of such institutions, and the implementation of any affirmative action program, is to afford every reasonable opportunity to such qualified student to succeed. But the major contribution must, of necessity, be borne by the individual himself and not by the State.
>
> Motivation; devotion to the law; perseverance; and ad-

diction to serious studies, are the basic ingredients of anyone seeking such professional career.

Affirmed.

Anderson, C. J.

APPENDIX "E"
(Filed June 16, 1982, Court of Appeals of the State of Washington)

IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON

ALONZO MARQUEZ, *Appellant,* v. UNIVERSITY OF WASHINGTON; JOHN HOGNESS, President of the UNIVERSITY of Washington; RICHARD RODDIS, Dean of the School of Law; and BOARD OF REGENTS OF THE UNIVERSITY OF WASHINGTON, *Respondents.*	No. 9080-1-I ORDER DENYING MOTION FOR RECONSIDERATION

The Appellant, Alonzo Marquez, having filed his motion for reconsideration herein and the court having determined that such motion should be denied, Now, therefore, it is hereby

ORDERED that the motion for reconsideration filed herein be, and the same hereby is, denied.

Dated this 16th day of June, 1982.

_____
Chief Judge

APPENDIX "F"

THE SUPREME COURT

STATE OF WASHINGTON

Dated October 8, 1982

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Counsel:
Re; Supreme Court No. 48884-3- Alonzo Marquex v. University of Washington - Court of Appeals No. 9080-1-I

Following consideration of the above entitled Petition for Review on October 8, 1982, the following notation order was entered on page 241, Volume 2, of the Petition for Review Docket:

"DENIED"

/s/ William H. Williams
Acting Chief Justice

Very truly yours,

Reginald N. Shriver
Acting Clerk